

**NOT FOR PUBLICATION**

**NOV 02 2004**

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE BELTRAN,

Petitioner-Appellant,

v.

ERNIE ROE, Warden,

Respondent-Appellee.

No. 03-55819

D.C. No. CV-02-04375-R

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding

Argued and Submitted October 4, 2004  
Pasadena, California

Before: HUG, T.G. NELSON, and WARDLAW, Circuit Judges.

Petitioner, Jose Beltran, appeals the denial of his petition for habeas corpus.

We have jurisdiction pursuant to 28 U.S.C. § 2253, and we review a denial of a petition for habeas corpus de novo.<sup>1</sup> We affirm.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

<sup>1</sup> *Gill v. Ayers*, 342 F.3d 911, 917 (9th Cir. 2003).

Because the parties are familiar with the facts, we do not recount them here. The California Court of Appeal properly held that any failure by the trial court to give the requested instructions regarding consent was harmless.<sup>2</sup> The trial court instructed the jury regarding the definition of consent, even though it did not give the particular instructions on consent that the defense requested. The jury's express finding that the victims were confined against their will necessarily implied that the victims had not consented. Thus, any error in the trial court's instructions on consent was harmless.<sup>3</sup>

Any error in the California Court of Appeal's finding that any error by the trial court was harmless was not contrary to or an objectively unreasonable application of federal law under AEDPA.<sup>4</sup>

AFFIRMED.

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<sup>2</sup> *Neder v. United States*, 527 U.S. 1, 8-10, 19 (1999) (stating that harmless error analysis is appropriate for challenges to jury instructions and describing what that analysis requires of the reviewing court). The court looks at the decision of the California Court of Appeal because it is the last explained state court determination. *Ylst v. Nunnemaker*, 501 U.S. 797, 805-06 (1991).

<sup>3</sup> *Cf. Brecht v. Abrahamson*, 507 U.S. 619, 629-30 (1993) (stating that a constitutional error that infects the entire trial process requires automatic reversal).

<sup>4</sup> 28 U.S.C. § 2254(d); *Woodford v. Visciotti*, 537 U.S. 19, 25 (2002).